

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on February 4, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Ted Powers- excused
Representative Tom Sawyer- excused

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisors of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Jim Gregory, The Kansas Chamber of Commerce
Lucky DeFries, Atty. Coffman, DeFries & Nothern
Chris Wilson, Kansas Agricultural Aviation Assoc.
Lloyd Hetrick, Hetrick Air Service
Larry Baer, Kansas League of Municipalities

Others attending:

See Attached List

Chairman Edmonds opened the meeting asking for the introduction of bills.

Representative O'Malley requested the introduction of a bill that would exclude tax rebates from the selling price of new vehicles for sales tax purposes.

With no objections, that bill was accepted for introduction.

Representative Goering requested a bill that would amend K.S.A. 79-1709 to clarify what clerical errors may be corrected by the county clerk in regards to real property tax appraisals to clarify what clerical errors may be corrected by the county clerk in regards to real property tax appraisals and a bill that would provide for sales tax exemptions for senior assisted living services, meals on wheels and such.

Without out objection those two bills were accepted for introduction.

Representative Kassebaum requested the introduction of a bill that would amend homestead property tax refund that basically would not include income derived from veteran's disability.

That bill was accepted for introduction without objection.

With no further bill introductions, Chairman Edmonds opened the meeting for hearings on **HB 2551** recognizing Lucky DeFries an attorney from Coffman, DeFries & Nothern, who appeared on behalf of the Kansas Tax Coalition in support of the bill. It is the belief of the Kansas Tax Coalition that the intent of this legislation is to try and return to where everyone thought we were when the Legislature addressed this issue in 1988 while at the same time providing a small degree of additional flexibility to address certain instances that could be viewed as gray areas (i.e. instances where aircraft owners are provided the opportunity to use their air craft for charitable purposes, etc.) (Attachment 1)

Jim Gregory, representing KCCI (Kansas Chamber of Commerce and Industry). Mr. Gregory appeared as a proponent of **HB 2551** which would clarify that aircraft based in Kansas, which are predominately used in the conduct of business or industry, are exempt from property taxes. (Attachment 2)

Executive Director of KAAA, (Kansas Agricultural Aviation Association, Chris Wilson testified before the

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on February 4, 2004 in Room 519-S of the Capitol.

committee in support of **HB 2551** which makes a positive change in clarifying that business air craft may have an occasional non-business use. (Attachment 3)

Next to testify before the committee in support of **HB 2551** was Lloyd Hetrick owner and operator of Hetrick Air Services of Lawrence, Kansas. Hetrick Air Services supplies total aircraft services to Eastern Kansas. Mr. Hetrick stated that over the years he had never been denied aircraft tax exemption approval as it was always based on the fact that all their aircraft are used exclusively to earn income in the process of conducting business. He further stated they were denied exemption approval in 1993 with the reason that the people who rented his airplanes did not use them exclusively for business. This ruling will greatly affect his business, therefore, he supports the change of language in **HB 2551**. (Attachment 4)

Written testimony was submitted in support of **HB 2551** by Timothy Rogers, AAE Executive Director, Salina Airport Authority. (Attachment 5)

With no further proponents, Chairman Edmonds recognized Larry Baer, Assistant General Counsel of the League of Kansas Municipalities as an opponent of **HB 2551**. The League requests that the bill be amended to:

1. reinstate the "actual, regularly and exclusively" language
2. delete the "used predominantly" language and the resulting definition; and,
3. To permit the exemption to a lessor unless the lessor has knowledge or should have reasonably known that the lessee is abusing the exemption status (Attachment 6)

There were no further opponents to **HB 2551**.

With no further business before the committee the meeting was adjourned at 10:32 a.m.

LAW OFFICES

COFFMAN, DeFRIES & NOTHERN

A PROFESSIONAL ASSOCIATION

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BARNEY J. HEENEY, JR., LL.M. (RET.)
J. R. GROFF, J.D. (RET.)
HAROLD R. SCHROEDER, J.D. (1986)
LEONARD H. AXE, S.J.D. (1975)

February 3, 2004

Mr. John Edmonds, Chairman
House Assessment and Taxation Committee

Re: House Bill 2551

Dear Chairman Edmonds and Members of the Committee:

My name is Lucky DeFries, and I am appearing today on behalf of the Kansas Tax Coalition in support of House Bill 2551. Some of you may recall that back in 1988 I was involved with legislation which we had hoped would clarify the business aircraft exemption. After the flying club cases involving Beechcraft and Cessna, the Kansas Court of Appeals handed down an opinion in the case of *Kenneth Godfrey Aviation, Inc. v. Smith*, 12 Kan. App. 2d 434 (1987) wherein the Court held that it was necessary to look at the use by the lessees in determining whether or not an exemption was appropriate. Because of some potential inconsistencies between the *Godfrey* decision and the flying club cases, legislation was sought to clarify the issues. Since the Legislature amended the statute in 1988, it was believed that business aircraft were exempt from property taxation if "rented" or "leased." When determining whether an exemption was appropriate, the Kansas Board of Tax Appeals has focused on whether the aircraft was being used exclusively by the owner to earn income in the owner's business (i.e. the business of renting airplanes).

However, in a case handed down just this past May, the Kansas Supreme Court suggested that the legislation which this body passed in 1988 for the express purpose of clarifying the situation after the *Godfrey* decision was handed down may not have accomplished its intended purpose. (See *In the Matter of the Application of Central Kansas E.N.T. Associates, P.A., for exemption of Ad Valorem Taxation in Saline County, Kansas*, 275 Kan. 893 (May 30, 2003)) While there may be other factual circumstances that our Supreme Court could view differently, the Court seemed to suggest one may need to look at the use by the lessee as well as the lessor's use. Thus, as the Property Valuation Department indicated as part of a memo which was presented to the Interim Tax Committee this summer, the consequence of this decision would be to reverse the basis upon which the Board of Tax Appeals has been granting the business

HOUSE TAXATION

Attachment 1

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aircraft exemptions since 1988. For this reason, the Kansas Tax Coalition believes that a legislative solution is the best course of action as opposed to the necessity of hundreds of taxpayers having to litigate the various issues and the prospect that counties could attempt to tax aircraft retroactively based on the Supreme Court's decision. The intent of this legislation is to try and return to where everyone thought we were when the Legislature addressed this issue in 1988 while at the same time providing a small degree of additional flexibility to address certain instances that could be viewed as gray areas (i.e. instances where aircraft owners are provided the opportunity to use their aircraft for charitable purposes, etc.)

The Kansas Tax Coalition would urge this committee to report House Bill 2551 favorably in the hopes that this legislation will clarify the issues raised by the Supreme Court and return us to where everyone believed we were following the Legislature's action in 1988. I would be happy to respond to any questions that the Committee might have.



S. Lucky DeFries on behalf of
the Kansas Tax Coalition

SLD:lkj

In re Tax Application of Central Kansas E.N.T. Associates, P.A.

No. 89,030

No. 89,031

 IN THE MATTER OF THE APPLICATION OF CENTRAL KANSAS
 E.N.T. ASSOCIATES, P.A., FOR EXEMPTION OF AD VALOREM
 TAXATION IN SALINE COUNTY, KANSAS.

SYLLABUS BY THE COURT

1. ADMINISTRATIVE LAW—*Judicial Review of Agency Action—Application of General Rules.* The rules in the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, are stated and applied in our review of the Kansas Board of Tax Appeals' decision.
2. STATUTES—*Construction—Appellate Review.* The interpretation of a statute is a question of law subject to unlimited review.
3. TAXATION—*Exemption from Taxation—Strict Construction of Rules and Statutes against Party Claiming Exemption.* Under the rules for interpreting tax exemption statutes, taxation is the rule and exemption from taxation is the exception. Constitutional and statutory provisions exempting property from taxation are to be strictly construed against the party claiming exemption, and all doubts are to be resolved against exemption. Where the language of a statute is relied upon as creating an exemption from taxation, it must be strictly construed against the party claiming the exemption, and the party must bring itself clearly within the exemption. Strict construction, however, does not warrant unreasonable construction. The burden of establishing an exemption from taxation is on the party claiming the exemption.
4. SAME—*Business Aircraft Tax Exemption—Exclusive Use Requirements.* The 1988 legislative amendment to the business aircraft tax exemption in K.S.A. 79-201k did not alter the exclusive use requirements.
5. SAME—*Business Aircraft Tax Exemption—Exclusive Use Requirements—Termination.* In determining under K.S.A. 79-201k whether an aircraft is actually and regularly used exclusively to earn income for the owner in the conduct of the owner's business or industry, consideration must be given not only to the use of the aircraft being made by the party claiming the exemption, but also to all uses being made of the property. A use contrary to the provisions of K.S.A. 79-201k, even though earning income for the owner, fails to satisfy the exclusive use requirement of the statute.

Appeal from the Kansas Board of Tax Appeals. Opinion filed May 30, 2003.
 Affirmed.

Jason L. Reed, of Norton, Wasserman, Jones & Kelly, of Salina, and *Kenneth W. Wasserman*, of the same firm, were on the brief for appellant.

No appearance by appellee.

**The Kansas Chamber of Commerce
835 S.W. Topeka Blvd.
Topeka, Kansas
785 357 6321**

**February 4, 2004
Kansas House Taxation Committee
HB 2551
By Jim Gregory, The Kansas Chamber**

Mr. Chairman and members of the committee:

My name is Jim Gregory, representing The Kansas Chamber today. The Kansas Chamber of Commerce supports HB 2551 which would clarify that aircraft based in Kansas, which are predominately used in the conduct of business or industry, are exempt from property taxes. Civil aviation links Kansas businesses and its people to the rest of the country and the world. Aviation has been a catalyst for the growth of commerce everywhere.

The world's small aircraft, more than half built right here in Kansas, allow rural areas and smaller cities to enter the mainstream of commerce in markets around the globe. Business aircraft are crucial tools for commercial enterprises across Kansas. HB 2551 is one measure that the Legislature could enact that would keep the costs of doing business in Kansas competitive as the state searches for ways to help business and industry create more jobs.

More than 20 states, none of which have the concentration of high technology aircraft manufacturing jobs that Kansas possesses, have wisely decided to entirely exempt aircraft based within their borders from property taxes, according to the National Business Aviation Association's State Aviation Tax Report.

The NBAA report cites the following 21 states that have zero personal property tax for aircraft: Arizona, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Vermont, and Wisconsin. The Kansas Chamber of Commerce urges the House Taxation Committee to approve HB 2551 as a step toward keeping Kansas attractive to business and industry.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

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Attachment 2

Date 2-4-04



Chris Wilson
Executive Director
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STATEMENT OF THE KANSAS AGRICULTURAL AVIATION ASSOCIATION
TO THE HOUSE TAXATION COMMITTEE
REPRESENTATIVE JOHN EDMONDS, CHAIR
REGARDING H.B. 2551
FEBRUARY 4, 2004

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Agricultural Aviation Association. KAAA's 300 members include the 110 agricultural aviation businesses in Kansas. We support H.B. 2551.

Under current law, the airplanes of these ag aviation businesses are property tax exempt. H.B. 2551 makes a positive change in clarifying that business aircraft may have an occasional non-business use. This provides for our members to occasionally use their aircraft for community service purposes.

While no fiscal note was posted for H.B. 2551 as of this morning, we would not anticipate a loss of revenue, since these business aircraft are already property tax exempt.

Thank you for the opportunity to support H.B. 2551.

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February 3, 2004

My name is Lloyd Hetrick and I have been an Aviation Small Business owner for over 25 years. The last 21 of those years, as a Fixed Based Operator in Lawrence. We provide total aircraft services to Eastern Kansas, including aircraft rental and instruction. I have filed applications for aircraft tax exemption over the years on a number of aircraft we have owned and have never been denied exemption.

Approval of the exemption has always been based on the fact that all our aircraft are used exclusively to earn income in the process of conducting business.

As I understand it, the State of Kansas denied exemption to Godfrey Aviation in Topeka back in 1988 due to the fact that his business aircraft were rented out for different uses. His primary business was giving flight instruction, photo flights and aircraft rental. This denial was reversed which has allowed for our aircraft to be exempt since that time.

In January of 2003 I sent in for exemption on two helicopters through our business Capitol Helicopter Inc.

One for the tax years 2000, 2001 and 2002 in Shawnee County and the other for the tax years 2001 and 2002 in Douglas County. These helicopters were used for instruction, photo flights, pipeline flying etc. One of the helicopters was leased to a business in Downtown Kansas City for several years. We received our exemption for the helicopter in Shawnee County with an approval date of 7/2/2003 and one years back taxes. While we were surprised and disappointed that we did not receive full payment of back taxes we now understand that the law regarding payment of back taxes had recently changed and as it was our tardiness that caused that issue there was not much we could do on that matter.

At the same time we applied for exemption for the two helicopters we also applied for exemption for one aircraft in Douglas County for the tax years 2002 & 2003. It also is used for aircraft rental and instruction.

We were however surprised when we received notice (in December 2003) that both the Aircraft and Helicopter had been denied exemption in Douglas County. The exemptions had been sent in at the same time, the law as far as we know has not changed and we have always been approved in the past. We were told we were denied because the people who rent our aircraft use them for personal use. Even though, we who own the aircraft that applied for exemption, use them solely for business purpose.

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The flight school portion of my business also operates two aircraft that are leased to me by two separate owners. One of the owners has a second aircraft based in Olathe that he uses in his primary business so he never uses the aircraft leased to us. If this ruling is allowed to stand his exemption would also not apply even though it is purely a business use aircraft for him.

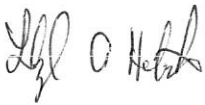
This ruling if allowed to stand has and will have detrimental effects for myself and other small aviation business owners and business aircraft owners. At this time the increased cost to my operation is about 14% and this will increase if I lose the potential for business investors to lease aircraft back to me due to the fact that they can no longer receive exemptions. This cost will have to be passed on to the end user which could mean fewer rentals and aircraft owners which effectively could put me and other smaller general aviation business out of business.

The Board of Tax Appeals wants to interpret the law based on the end user of the aircraft and not the business that owns it. I do not believe this was the original intent of the law or an interpretation that will benefit general aviation in the State of Kansas.

Aviation as a whole has taken a hit since September 2001. Who would have ever thought that all the General Aviation Airports in the country would be shut down for days?

I am not the only small aircraft company that has or will be affected by this ruling. I would ask you to think hard about what the intent is and should be of this law, and if you like myself agree that the current interpretation by the Board of Tax Appeals is not correct that you would also consider making any changes retroactive to cover previous years.

Thank you for allowing me to express my view point and for your time and consideration on this matter.



Lloyd A. Hetrick

SALINA Airport Authority

February 3, 2004

Chairman
Donald E. Morris

Vice-Chairman
Robert H. Miller

Secretary
Dr. Randy D. Hassler

Treasurer
Stephen C. Ryan

Past Chairman
John K. Vanier, II

Executive Director
Timothy F. Rogers, A.A.E.

Mgr. of Administration
and Finance
Michelle R. Swanson

Mgr. of Operations,
Maintenance and ARFF
Ryan E. Rocha

Board Attorney
Greg A. Bengtson

The Honorable John Edmonds
Chairman
House Committee on Taxation
Kansas State Capitol
10th & Jackson
Topeka, KS 66612

Re: HB 2551 - Business Aircraft Property Tax Exemption

Dear Chairman Edmonds:

The Salina Airport Authority supports the exemption of Kansas based aircraft used in business and industry from ad valorem tax imposed by the state and its taxing subdivisions. Such an exemption is vital to the growth of Kansas.

Today, the travel method used by business and industry is shifting to an increased utilization of general aviation business aircraft. This is due in large part to the efficiencies and security benefits offered by these types of aircraft. By exempting business aircraft from ad valorem taxes, the state will promote the use of business aircraft by both existing and new business and industry.

The continued economic growth of communities such as Salina is contingent upon access to the national air transportation system. By offering the benefits of an ad valorem tax exemption to business and industry, Kansas airports of all size are able to play a vital role in the economic development of their respective communities and regions. The exemption will encourage businesses to take advantage of the benefits using a business aircraft to reach destinations throughout the United States and the world.

Thank you for your consideration of the Salina Airport Authority view on HB 2551 and I would urge the committee's favorable approval of the bill.

Respectfully submitted,

SALINA AIRPORT AUTHORITY


Timothy F. Rogers, A.A.E.
Executive Director

HOUSE TAXATION

Attachment 5

Date 2-4-04


Salina Municipal
SLN Airport


SALINA Airport
Industrial Center



League of Kansas Municipalities

Date: February 4, 2004
To: House Committee on Taxation
From: Larry R. Baer
Assistant General Counsel
Re: HB 2551 - Testimony in Opposition

Thank you for allowing me to appear before you today on behalf of the League of Kansas Municipalities and its member cities to present testimony in opposition of HB 2551.

HB 2551 would remove the "actually and regularly" and "exclusively" language from the business aircraft exemption and substitute "predominantly" for it. "Predominantly" is defined as used at least 80% of the time to earn income for the owner. Stated another way, up to 20% of its usage could be for pleasure – pleasure of a company's board of directors, significant shareholders or high level executives.

Property tax exemptions represent non-cash subsidies from cities and counties to the benefitting business. Granting a business related property tax exemption for economic development purposes is common place for local governments. The intent of the exemption may be as an incentive to attract new business, or encourage growth of existing business or some combination. But in all cases the intent is to directly benefit the business and not the management of the business.

If an exemption is granted on corporate aircraft where as much as 20% of its usage can be non-business related, the public is subsidizing something other than the business. In many cases, particularly those that have come to light locally, this means that the public is subsidizing the pleasure travel of highly compensated executives. Public funds should not be used for the private benefit of private citizens.

The League understands the leasing company dilemma that HB 2551 attempts to address. As written, the provision is too broad. It would allow a leasing company to escape unharmed where they knew or should have known that their lessee was abusing the exemption.

For the above reasons the League opposes HB 2551 and asks that the committee reject it.

In the alternative, the League asks that HB 2551 be amended to:

- reinstate the "actual, regularly and exclusively" language;
- delete the "used predominantly" language and the resulting definition; and,
- to permit the exemption to a lessor unless the lessor has knowledge or should have reasonably known that the lessee is abusing the exemption status.

A mark up of HB 2551 showing the above requested changes is attached for your information and reference.

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Attachment 6

Date 2-4-04

HOUSE BILL No. 2551

By Committee on Taxation

1-22

AN ACT concerning property taxation; relating to exemptions; business aircraft; amending K.S.A. 79-201k and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-201k is hereby amended to read as follows: 79-

201k. (a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. For all taxable years commencing after December 31, 1982, all aircraft ~~actually and regularly~~ used exclusively, predominantly to earn income for the owner in the conduct of the owner's business or industry.

If the owner's business or industry is the leasing of aircraft, the lessee's use of the aircraft shall not be considered in determining this exemption.

~~For purposes of this provision, "predominantly" means: (1) At least 80% of the total use of the aircraft; or (2) utilization of the aircraft such that all of the aircraft costs are deductible for federal income tax purposes.~~

actually and regularly
exclusively

; provided, however, that if such owner knows or should have reasonably known that any such leased aircraft has or will be used in a manner that is inconsistent with this provision, this exemption shall not apply.

Sec. 2. K.S.A. 79-201k is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.